

The Solicitors' Journal

VOL. LXXXIX

Saturday, December 1, 1945

No. 48

CONTENTS

CURRENT TOPICS: Magistrates and Politics—Parliament and the Nuremberg Court—Solicitors at Belsen—Emergency Housing Accommodation—Red Tape—Estate Duty: Classifications of Property—Road Safety—The Legal Aspect—H.M. Land Registry—Recent Decision..	535	OBITUARY	542
THE NEED FOR LEGISLATION IN DIVORCE IN THE LIGHT OF RECENT DECISIONS	537	HONOURS AND APPOINTMENTS	542
COMPANY LAW AND PRACTICE	538	NOTES OF CASES—	
A CONVEYANCER'S DIARY	539	National Union of General and Municipal Workers v. Gillian and Others	543
LANDLORD AND TENANT NOTEBOOK	541	Practice Note	543
PRACTICE NOTES	541	PARLIAMENTARY NEWS	543
TO-DAY AND YESTERDAY	542	COURT PAPERS	543
		RULES AND ORDERS	544
		RECENT LEGISLATION	544
		STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES	544

CURRENT TOPICS

Magistrates and Politics

THE Solicitor-General, on 22nd November, answered criticisms that have been repeatedly made in the last few weeks concerning a recent statement by the Lord Chancellor that the ideal bench was one with an independent chairman with some practical experience, and, if possible, some legal training, two magistrates from the right and two from the left. Commander MAITLAND asked, first, what exactly did the Lord Chancellor mean, and second, was there any truth in the suggestion that pressure had been brought on authorities in various counties to appoint magistrates on a direct political basis. He also asked for information about the Commission which had been appointed to discuss the whole matter. Sir FRANK SOSKICE, K.C., Solicitor-General, said that there seemed to be some misconception arising out of the Lord Chancellor's words. The Lord Chancellor's view was that the first consideration on making appointments of J.P.'s was the personal suitability of the candidate in point of character, integrity and understanding. But it was impossible to disregard political affiliations. It was essential that the administration of justice should never in any sense become a matter of party politics. At the same time, in taking steps to see that all sections of the community were adequately represented, the Lord Chancellor naturally found political affiliations a convenient guide to follow. That did not mean that he could only appoint adherents of political parties in the House. Persons of no known affiliations and persons independent of party were included in his appointments. The Lord Chancellor in making appointments naturally had regard to these circumstances, but merely as a guide in enabling him so far as he could in the exercise of his supervisory jurisdiction to maintain a fair balance. In adopting the view he had taken the Lord Chancellor was simply following the practice of successive Lord Chancellors who had preceded him in the past. We think it should now be clear that personal suitability is the first consideration in such appointments, and that the question of party affiliation is, as it should be, an auxiliary guide, to be used only for convenience, and not to assist in solving any problems of principle in regard to these appointments.

Parliament and the Nuremberg Court

THE SPEAKER's statement in the Commons on 22nd November as to the status of the International Court at Nuremberg was a historic ruling in relation to the rules of debate in that House. Earl Winterton had raised the matter by asking whether the ruling that the act or word of certain high officials of state could only be raised on a substantive motion would be applicable to the Allied Court or

International Tribunal sitting at Nuremberg. That was to say, was Lord Justice Lawrence protected from any criticism by question and answer in debate in the House, save on a substantive motion in the same way as if he were sitting as a judge of the High Court? The rule, the Speaker replied, applied only to the courts of this country, and it would be invidious and improper not to extend the same protection to their colleagues on the Tribunal who represented the three other allied nations. There was another rule, that matters which were *sub judice* should not be the subject of discussion in the Commons. That rule in terms applied only to British courts. But we had the same interest to see that nothing was done here to disturb the judicial atmosphere as we had in the case of British courts—indeed, perhaps a greater interest, since the eyes of the world were upon this new and difficult procedure of international justice, and the consequences of ill-advised interference might be incalculably mischievous. "I rule therefore," said the Speaker, "that all the members of this international court are protected to the same extent as British judges, and that discussion of its proceedings is out of order in the same way as matters under adjudication in a British court of law." It is not an exaggeration to say that this ruling marks an important stage in the building up of a system of law for the world.

Solicitors at Belsen

UNLIKE the Nuremberg trial of war criminals, the Belsen trials were conducted before purely military tribunals constituted in the area of the British occupation under Royal Warrant issued some months ago. As VISCOUNT SIMON ably explained in the *Sunday Times* of 25th November, the members of such a court are British military officers nominated by the Commander-in-chief or his delegates. "They are not primarily lawyers," he wrote, "but are advised by an officer with legal attainments drawn from the Judge-Advocate General's Department at the War Office." At Belsen, the chief assistant to Colonel Backhouse, the prosecuting officer, was Major H. G. Murton-Smith, a solicitor and partner in the firm of Murton, Clarke & Murton-Neale, of Cranbrook and Hawkhurst. Another solicitor, Lt.-Col. Champion, one of the investigators who helped to prepare the case for the prosecution at Belsen, is also a solicitor and clerk of the peace at Tenterden. His wife, who is also a solicitor, deputised for him during his absence.

Emergency Housing Accommodation

THE legal aspect of the new voluntary scheme of temporarily surrendering spare rooms for the use and occupation of citizens without homes appears in the two provisions in the

new Defence Regulation 68CB, which deal with covenants against sub-letting and with control under the Rent Acts respectively. When a householder has registered his surplus accommodation with the local authority, and while such accommodation is so registered, "it shall be lawful, notwithstanding any provision to the contrary in any lease or tenancy or in any covenant, contract or undertaking relating to the use to be made of any land, and notwithstanding any restriction imposed by or under any enactment, for the accommodation to be made available for occupation, and to be occupied . . . in accordance with the registered terms and conditions." Registered accommodation so let is not subject to the control of the Rent Acts and no regard is to be paid to the rent at which it is let in order to determine the standard rent. It is important to note that registration is entirely voluntary, and even the local authority is not bound to take a registration and may cancel it if it seems likely that the premises affected will be made available for occupation without registration. The authority is bound to cancel a registration "on the application of the person for the time being entitled, subject to the rights over the accommodation of any tenant or lodger, to occupy the dwelling in which it is comprised." The only compulsion in the regulation is that imposed on the local authority to keep the register. In a statement in the Commons, on 17th October, the Minister expressed a hope that the people of this country would respond to the appeal for accommodation this winter for returning soldiers, homeless people, overcrowded people, and people coming to work in their district. The Minister said that in exceptional cases, where householders with accommodation grossly in excess of their reasonable requirements refused to make it available, compulsory powers would have to be used. A Ministry of Health circular to local authorities dated 16th November states that in such a case the Minister would delegate to the clerk of the council power to requisition the premises, notwithstanding that they were occupied. The occupier would be left in possession of the rooms in immediate use, and the others made available to persons in need. Any case in which the authority consider that requisitioning powers must be used should be referred to the senior regional officer of the Ministry.

Red Tape

MORE in sorrow than in anger, we must reproach Professor K. C. WHEATE, Gladstone Professor of Government and Public Administration in the University of Oxford, who, in his inaugural address on 16th November, is reported to have said that the chief public functionary who used red tape was the solicitor. It would not be quite fair to construe this as a calculated attack on the legal profession, for his address was concerned more with a defence of what he called "parliamentary bureaucracy." One of the arguments which he used in support of his thesis was that bureaucracy was an essential part of our whole social organisation, and it was in this connection that he instanced the concern of solicitors with red tape. Probably solicitors have no right to feel aggrieved. A bureau is merely a foreign word for an office, in which, in fact, a solicitor does his work, and as for red tape, is it not the means through which documents and comments, called concisely "briefs," are passed to counsel, with an implicit "to you, please"? And yet there is always something indefinably unpleasant and almost abusive about such words as "bureaucratic" and "red tape." A mere lawyer may therefore feel that Professor Wheate might have handed the legal profession a bouquet, however small, to compensate for the misunderstandings that may result from his form of argument. However, on a close scrutiny of the report of Professor Wheate's address, it would seem that his remarks were not intended to be uncomplimentary. One gathers that his opinion is that it is necessary to carry on some of the work of our social organisation in offices, and one may even infer that he is not averse to the use of red tape, in moderation. Solicitors themselves do not enjoy using red tape, especially now that it is so expensive. It is one of those articles which it is more blessed to receive than to give.

Estate Duty: Classifications of Property

Two important changes in December, 1941, in a long-standing practice of the Estate Duty Office were made, according to the October issue of the *Law Society's Gazette*, without notification to the public or to members of the profession. The old practice of the Estate Duty Office had been to allow the special agricultural rate of duty prescribed by s. 23 (1) of the Finance Act, 1925, in respect of agricultural property held on trust for sale. The change in 1941 was that the Estate Duty Office decided that when the deceased was an absolute owner and, by reason of the existence of a prior trust for sale, his interest was only a personal right against trustees, there was no justification for conceding the agricultural rate. Another practice which was changed was of forty years' standing. The practice was to regard as land and therefore as attracting freedom from interest on estate duty for the first twelve months after the death under s. 6 (8) of the Finance Act, 1894, investments representing capital money arising from sales of settled land. In December, 1941, this practice was changed and such investments or money were to be regarded in future as money or personality, unless they remained subject to a binding trust for investment in freehold land. The Council communicated with the Controller of the Estate Duty Office and expressed particular concern at the change with regard to agricultural land. The intention of the 1925 legislation, the *Gazette* points out, appears to have been to encourage the use of trusts for sale rather than strict settlements, and the former have been widely advocated in preference to the latter in text books. It was thought that many solicitors had advised clients to the same effect. The Council pointed out that it now appeared that such solicitors had inadvertently involved their clients in liability for extra estate duty, where the subject of the settlement was agricultural land. As a result of the Council's representations the Estate Duty Office will in future revert to their original practice as regards both agricultural land held on trust for sale and capital money arising on a sale under the Settled Land Acts of settled freeholds. Cases already dealt with under the changed practice cannot be reopened.

Road Safety

No lawyer views with satisfaction the prospect of increased litigation as a result of the return of a large volume of motor traffic to the roads. It seems, however, that, in spite of the fact that nearly everyone is nowadays both a motorist (on public transport vehicles at any rate) and a pedestrian, the public is still divided in its views on the causes of and remedies for the disastrous increase in road casualties and that the two views may roughly be described as those of the motorist and of the pedestrian, respectively. The Standing Joint Committee of the Royal Automobile Club, the Automobile Association and the Royal Scottish Automobile Club has issued a statement observing that road users were not represented on that committee, and that no evidence was taken on their behalf. The joint committee recommends that road safety should be the ultimate responsibility of the Ministry of War Transport and not—as suggested in the report of its committee—shared with local authorities. The committee also recommends the standardisation of street lighting, the setting up of a scientific research board to study the cause of road accidents, and a statutory obligation on drivers to give the required signals when stopping or changing direction. On the other hand, a motorist by profession spoke up on behalf of the pedestrian at a meeting organised by the Pedestrians' Association on 5th November. The speaker was a taxi-driver, Mr. W. A. BAXTER, of Harrow, who during the war drove a bus at Taunton for over three years. "Unless something is done very quickly," he declared, "there will be slaughter on the roads next year such as we have never known. It will be an absolute blood bath. We have been trying to deal with the problem from the wrong end of the stick. It is on the motorist that the onus should fall to avoid accidents. Driving tests should be thoroughly revised. Ministry of Transport schools

should be set up, possibly administered by county councils. Only 1 per cent. of accidents are really accidents; 99 per cent. can be avoided. Incompetence, impatience and irresponsibility are the three chief causes of accidents, and the third point includes drinking by motorists."

The Legal Aspect

Mr. A. E. CRANKSHAW, formerly chief clerk at one of the Metropolitan magistrates' courts, said that 90 per cent. of the unremitting road safety propaganda was to play down the desirability of enforcing the law against the motorist. Penalties were often inadequate. Suspension of the licence after conviction was very rare. The law relating to brake tests was practically ineffective. He felt strongly about the provision that permitted a driver whose licence had been suspended to apply for its restoration after six months. The licences were returned almost automatically, though none of the original witnesses was present when such applications were heard. It would be surprising if there was a similar provision in any other penal statute. If accidents were to be ended much more was needed than brightly coloured posters urging children of five to do this or that. VISCOUNT MAUGHAM, who presided, said he was convinced that the law must be strengthened by the amendment of the Road Traffic Acts. He thought it would be necessary to alter the rule about the onus in road offences. Dangerous driving could often not be proved because there was no witness of the speed of the vehicle. The law should throw upon the defendant

the obligation of showing that he was exercising due caution at the time of the accident. A resolution was passed wishing success to the Road Safety Campaign inaugurated by the Minister of War Transport and expressing the hope that it would lead to greater co-operation between the police, the public and magistrates in reducing the large number of road accidents. It urged more efficient methods of law enforcement by police authorities, and asked that the law itself should be further amended with the object of reducing the number of road casualties.

H.M. Land Registry

WE should like to draw readers' attention to the announcement at p. 544 of this issue regarding the re-opening of the Land Registry at Lincoln's Inn Fields on 31st December next.

Recent Decision

In *Carnarvon (Earl of) v. Carnarvon (Countess of)*, BUCKNILL, J., on 21st November (*The Times*, 22nd November), held that where a wife in June, 1940, left her husband with her husband's consent for the purposes of acting in a play in America, and later was reluctant to return to England owing to the difficulty and danger of the journey back to England, the kind of life she would have to live in England and what might happen to her because of the war, she had not been guilty of desertion, as on the facts it was clear that she remained attached to her husband and had no intention wrongfully to bring cohabitation to an end.

THE NEED FOR LEGISLATION IN DIVORCE IN THE LIGHT OF RECENT DECISIONS

(Concluded from p. 526)

In *Smith v. Smith* [1945] 2 All E.R. 452, Pilcher, J., held that a maintenance agreement whereby, *inter alia*, the wife petitioner undertook not to petition for restitution of conjugal rights did not prevent her from successfully alleging desertion against her husband who entered into a similar undertaking, because, on the facts, she never intended to agree to live apart from him, and the agreement contained no express provision to this effect. The judge was thus enabled to distinguish the case of *Long v. Long* [1940] 4 All E.R. 230, where, *mutatis mutandis*, the facts were the same except that the agreement involved in that case did contain such an express provision, and pronounce a decree *nisi* in favour of the petitioner.

In *Beard v. Beard*, *supra*, Scott, L.J., reached the conclusion that desertion had always been a matrimonial offence on the ground that it had been remedied before 1857 by proceedings for restitution of conjugal rights (at p. 309). One may be permitted respectfully to doubt whether in the eye of the ecclesiastical courts conduct which resulted in an order for restitution of conjugal rights affirming the full existence of the marriage was *in pari materia* with conduct such as adultery or cruelty which might result in a divorce *a mensa et thoro* which disaffirmed the continued existence of marital duties. Be that as it may, however, the judgment of Pilcher, J. (reaffirming the views expressed as long ago as 1879 by Sir James Hannen, P., in *Marshall v. Marshall*, 5 P.D. 19, at p. 23) to the effect that the procedure had always been somewhat artificial "aimed not so much at securing the return of the deserting spouse as obtaining some ulterior benefit" [1945] 2 All E.R., at p. 454, suggests that restitution proceedings are really no longer a remedy for desertion as such.

Is it not clear that the time has come for the abolition of these petitions in favour of some procedure in the High Court analogous to that under the Summary Jurisdiction (Separation and Maintenance) Acts more suited to their primary purpose under the modern law? This, according to Pilcher, J., in the case of restitution suits by wives, "is to obtain during the period of desertion periodical payments in excess of the maximum of £2 a week obtainable under a magistrate's

order" (at p. 454). It is at least doubtful whether husbands would be deeply aggrieved by the loss so far as restitution proceedings by them are concerned of a possible resort to the High Court where no reconciliation machinery exists in a vain endeavour to procure by judicial process what they cannot procure extra-judicially—the return of their erring wives.

The desirability of some such reform as that suggested is indicated by a consideration of what would have been the position in *Smith v. Smith*, *supra*, had the proceedings been for restitution of conjugal rights instead of dissolution of marriage. It seems that, if they had been undefended, the wife would have succeeded. For, restitution suits, unlike divorce cases, are a purely personal matter, and the court will not set up an undertaking not to petition of its own motion (*Phillips v. Phillips* [1917] P. 90; *Williams v. Williams* [1921] P. 131). On the other hand, if the husband set up the undertaking not to petition for restitution of conjugal rights, the wife would have failed (*Marshall v. Marshall*, *supra*). Had the dissolution proceedings been defended instead of undefended, the result would have been the same, but there is surely something ludicrous in a law which says that a husband may be in desertion although the court cannot use the power which it has inherited from days when very different theories prevailed to order his return to his wife if he chooses to defend restitution proceedings. This anomalous situation would disappear if the true position were recognised to be that the husband was in desertion although, because of the undertaking by his wife not to seek the assistance of the court during the currency of the marriage, the court could not order him to maintain her beyond the provision of their agreement if he chose to set it up.

The situation under the present system becomes even more anomalous when it is remembered that the cases cited above according to which the success or otherwise of restitution proceedings may vary according to whether they are defended or undefended apply where the agreement between the parties contains an express provision that they should live apart (*Walters v. Walters* [1921] P. 303). It is not impossible to imagine a case in which the court would have to say that there was no desertion although its restitution decree had

not been complied with, because the latter was granted in undefended proceedings in which a separation agreement had not been set up by the respondent.

The case of *Smith v. Smith*, *supra*, may be regarded as an exception to the general rule that "the issue with regard to conduct of a wife short of a matrimonial offence is precisely the same whether the husband is resisting a decree for the restitution of conjugal rights or resisting a charge of desertion" (*Glenister v. Glenister* [1945] P. 30, at p. 37, *per* Lord Merriman, P.). It seems, however, that the rule itself may produce some curious results. Thus in *Beavor v. Beavor* [1945] 2 All E.R. 200, the parties were married in 1923. A son was born to them in 1925 as the result, as Henn Collins, J., found, of one single act of intercourse. Thereafter the wife refused to have intercourse with her husband, who left her on this account in 1940. His petition for dissolution was filed after a period of three years and more had elapsed, alleging desertion against his wife since that date. The respondent cross-prayed for divorce on the same ground. On the facts the judge held that it was as if the wife had been rendered structurally incapable by disease or accident, so the husband had no ground for leaving her. The result was that the wife succeeded on her cross-prayer. The learned judge stated, however, that had her refusal of intercourse been wilful, she could not have petitioned for restitution of conjugal rights (*Synge v. Synge* [1901] P. 317) so her prayer for dissolution would have failed. In his opinion (at p. 201) it would not have followed that the wife would in those circumstances have been in desertion so as to enable the husband to succeed on his petition.

Admittedly the point was not expressly decided in *Beavor v. Beavor*, *supra*, but the judgment of Henn Collins, J., serves as a reminder that under the existing law it is possible for situations to arise where, although the parties are not separated by consent, neither is in desertion. There have been cases in which both the prayer and the cross-prayer founded on desertion for three years or more have failed

although there has been no question of the parties having been separated by consent, nor has the discretion of the court been involved. It is submitted with the utmost respect that these situations are repugnant to common sense, which can tolerate cases in which neither spouse can obtain a divorce on the ground of desertion because their separation is consensual or because their behaviour has been such that the court cannot exercise the discretion conferred upon it by statute in favour of either of them but not otherwise. If the authorities on desertion do lead to this result it is submitted that at least the courts should be given a discretion to pronounce a decree in favour of one spouse where the parties have been actually separated without consent for more than three years although it cannot decide which of the two is in desertion.

It is of course appreciated that in many matters it is sound policy to leave the development of the law in the hand of the judiciary. It is, however, exceedingly doubtful whether this is so in the case of divorce. In the first place divorce is substantially the creature of statute; secondly, the court already has such a measure of discretion in these matters that additional discretionary powers ought not to cause much alarm, although they can only be conferred by the Legislature, and, thirdly, appeals to the House of Lords in divorce are so rare as to make it unfair to practitioners and parties to wait for such matters as those discussed in this article to be finally settled by judicial decision. Above all these considerations however, there are the reflections that there is no continuity of history in most of our law of divorce, and that views as to matrimonial duty have varied considerably during the past two centuries. There is indeed force in the criticism which has been raised in the lay press in discussing *Beard v. Beard*, *supra*, that the decision of the majority of the court should have sought its inspiration from the law laid down in 1730 in *Worsley v. Worsley*, 2 Lee 572, but under the present dispensation it is difficult to see what other approach could have been adopted.

COMPANY LAW AND PRACTICE

THE COHEN REPORT—VII—NOMINEE SHAREHOLDINGS

THERE is probably no part of the report which has aroused more widespread interest, and, incidentally, more criticism, in the City, than that part of it which concerns nominee shareholdings. On the whole it is probably true to say that the criticism is directed far more against the complexity of the proposals (based largely on the view that little or nothing of positive value will be achieved by them) than against the principle which lies behind them. The report puts this succinctly when it says: "In principle, we consider that shareholders and the public are entitled to know in whom control is vested," and there is little doubt that the great mass of opinion in this country would endorse that statement.

The Committee says that it examined a variety of schemes intended to secure full disclosure, but that none of them was watertight; it then makes two suggestions which it says "are intended to make the information given in the register of members more revealing than it is at present and which would not impose an intolerable burden on companies." The Committee does not claim that these suggestions would result in disclosure of the real seat of control in every case.

What are these two suggestions? The first is that nominee shareholdings should be distinguished from other shareholdings in the register, and the second that every person who is the beneficial owner of 1 per cent. or more of the capital of a company, or of any class of shares in a company, must file a declaration of such ownership within a limited time. These must be examined in some detail, and first we should consider how it is proposed that the sheep are to be separated from the goats, as this concerns both proposals.

A person is to be deemed to be the beneficial owner of a share if he is—

- (i) absolutely entitled to the share; or
 - (ii) entitled absolutely or conditionally to require the transfer of the share to himself or to any person nominated by him; or
 - (iii) entitled directly or indirectly to control the exercise of the voting right in respect of the share.
- (i) is perfectly straightforward, and it would not seem that any difficulty can arise with regard to this. (ii) and (iii) may give rise to some difficulties in practice in deciding who is, or is not, within their ambit. It has been suggested that (iii) would include, e.g., trustees in whose names shares are registered, but this view would appear not to give sufficient weight to the word "control." A person who actually exercises the voting right in respect of a share, that is, the registered holder, does, in one sense, control the exercise of that right, but the word "control" is, so far as he is concerned, mere surplusage, because he actually exercises the right. It would appear to me that (iii) is intended to cover the case of a person, not being the registered holder, who can direct the registered holder how he should vote; any other view makes the definition so wide as to be absurd. Whatever be the true construction of (iii), however, it seems that the wording of it should be made unambiguous.

Obviously, one will get curious results from these definitions; take the case of a simple settlement, where shares are vested in trustees and are held on trust for X for life and then for Y. X and Y taken together are the beneficial owners, because not

only can they require the transfer of the shares to a person nominated by them, but they can also control the exercise of the voting rights in respect of the shares. This is just one illustration of the problems which will arise; lack of space precludes any development of this aspect, though I might observe in passing that the real trouble in connection with the definitions will probably arise under the second proposal and not the first.

The first proposal is to distinguish nominee shareholdings from others. This is to be achieved for the future by requiring every transfer of shares to contain a declaration by the transferee stating whether or not he will be the beneficial owner of the shares comprised therein. As to the present position, every company is to send, on the day of issue of the notice convening the first annual general meeting to be held more than one month after the coming into force of the new Act, to each of its shareholders a notice requiring him within two months to sign and send to the company a declaration stating whether or not he is the beneficial owner of the shares registered in his name. Provision is made for a company being kept informed of changes.

It is intended to deal smartly with people who do not comply with these requirements—six months or £500, or both. I doubt, and I am not alone in this, whether the Committee fully appreciated the magnitude of the operations it is proposing to require companies to carry out. Over a decade ago Imperial Chemical Industries, Ltd., and Imperial Tobacco Company (of Great Britain and Ireland), Ltd., had between them well over 200,000 shareholders, and that figure is now almost certainly larger. To split registers of members into two separate parts, consisting of nominee and non-nominee shareholdings (which is what is proposed to be done), will be an enormous task; and, when completed, it can probably never be regarded as either accurate or up to date. It is too much to suppose that, whatever pains and penalties can be inflicted, all shareholders will comply with the requirements. Some will be neglectful, and some it will be impossible to trace.

And, at the end of all this, what will be net result? Very little, I suggest: the two registers will contain little information of any value; the report modestly says that the suggestions would provide information which would in some cases disclose where control lay (this must refer to the second suggestion) and would reduce preliminary investigation where the Board of Trade makes (as it is suggested it should have power to make) an investigation into the beneficial ownership of shares. But why, just to save the Board of Trade trouble, put this tremendous burden on companies?

The second suggestion is of a different character and does

attempt to deal more directly with the question: who does in fact control the company? It provides that where any person is directly or indirectly the beneficial owner of 1 per cent. or more of the issued capital of the company, or of the issued shares of any class, and where any of such shares are not registered in his name, he must send to the company within two months of the date of coming into force of the Act, or within ten days of the date on which he becomes such owner, a declaration stating the number and class of shares of the company of which he is such owner and the names of the registered holders. If any change occurs, he is to send a declaration of such change.

Let us consider again the case of a settlement. Take a trust for A for life, then to B for life, with a power for B to appoint by will among his children by a named wife (who is dead) and in default of appointment to his children by that wife at twenty-one. The children have all attained twenty-one. This body of persons are therefore the beneficial owners; presumably they have to execute the declaration. One of the children is in Borneo; another is a naval officer who is often at sea. The trustees of the settlement, in pursuance of powers given to them by the investment clause, invest in more than 1 per cent. of the issued preference shares (with no voting rights) in the capital of P.Q., Ltd. Within ten days this body has to send to the company a declaration of beneficial ownership; if it does not each of its members will be liable to six months' imprisonment and a fine of £500. Does this make sense?

Take another case. X is the beneficial owner of one-half per cent. of the redeemable preference shares in a company. The company has power to, and does, redeem a large holding of these shares, but not including those of which X is the beneficial owner. X does not hear of the redemption at the time; why should he? But he has become the beneficial owner of more than 1 per cent. of the redeemable preference shares and has become bound, under pains and penalties, to declare this within ten days of the date on which it happened.

The converse is, of course, likely to be much more common where, by reason of an issue of shares, a beneficial owner of more than 1 per cent. ceases to be such.

These are points (and there are others) which need careful consideration; and, looking at these proposals as a whole, there is much to be said for the view that what little they may achieve would be out of all proportion to the difficulties involved. As I have indicated, few people would quarrel with the principle of the thing; would this not be best served by giving the Board of Trade a full power of investigation and leaving it at that?

A CONVEYANCER'S DIARY

ABSTRACTS AND ASSENTS

My recent article about assents has brought me an interesting letter from a solicitor, now in the Army. He says that he was recently helping at his old office, and raised with his principal the point that it was not correct for the solicitor of a vendor to bring on to the abstract of title the beneficial provisions of wills coming into force after 1925. That was the point which I recently sought to make here. He was met with the reply that it has always been the practice to abstract the beneficial provisions of wills, that to omit such provisions is merely to invite an "unprofitable wrangle" with the purchasers' solicitors, and that in any case where the title is in order it is far less trouble to abstract them. My correspondent adds that he understands that The Law Society "fairly recently gave its blessing to the abstracting of post-1925 wills," and comments that my views seem not to be shared by "respectable" (his inverted commas) solicitors. He concludes that, however much solicitors may agree with me in theory, the practice of abstracting "post-1925 wills" will continue until the law is changed or until "all pre-1925 solicitors, and their clerks, retire from active life." He also inquires, as a subsidiary point, what is the position where

a will and an assent are abstracted, and the purchaser's solicitor, inspecting the probate, looks beyond it to the will, out of "idle curiosity," and there finds a specific devise inconsistent with the assent.

Though I do not understand the reference to The Law Society, I am not in the least surprised at the other contents of this letter; my article was directed to criticise the still much too widespread tendency to abstract unnecessary matter. I hoped, perhaps presumptuously, that the fact that these habits were criticised in the conveyancing column of this journal might help and support those solicitors who are anxious to adopt the correct practice. It is, of course, not a mere question of being right in one of two ways, old-fashioned or new-fangled. In another five weeks the practice of abstracting the beneficial interests created by "post-1925" wills will have been wrong for exactly twenty years (apart from the exceptions mentioned in my former article.) I cannot help thinking, therefore, that the solicitor for a vendor whose title is good if the statutory form of abstract is adopted, but impeachable if more is abstracted, would have difficulty in defending an action for negligence brought

by his own client if a sale were to go off through excessive abstraction. The solicitor who abstracts the beneficial provisions of wills where the title is in order is not so easily assailable, but I hope that the opinion of the profession may soon be clearly enough formed to make him wish to abandon a wrong practice. The case for his doing so is much stronger than that in favour of an earlier generation learning to convey land "to A in fee simple," instead of "to A and his heirs," since in that case the new words of limitation were only made permissible, and the old ones were still correct. The situation now is that not only do the provisions in the Administration of Estates Act put the "curtain" in front of beneficial interests, for the convenience of the parties, but s. 1 of the Act provides that the testator's real estate devolves on his personal representative "notwithstanding any testamentary disposition thereof." A will therefore operates only in equity, and is not part of the title to the legal estate (save in the exceptional cases already mentioned). It is therefore wrong to abstract it, unless the subject-matter of the sale is an equitable interest only.

As regards the subsidiary point, the solicitor for a purchaser who, "in idle curiosity," looks beyond the probate to the will and finds there a flaw in the title, does not, in my opinion, affect his client with notice of that flaw. The modern rules as to notice are set out in s. 199 of the Law of Property Act, 1925. The material portion is subs. (1), which is as follows: "A purchaser shall not be prejudicially affected by notice of— (i) any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof; (ii) any other instrument or matter or any fact or thing unless—(a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries or inspections had been made as ought reasonably to have been made by the solicitor or other agent." This subsection is not entirely new: it replaces a provision of the Conveyancing Act, 1882, identical save for the provision of para. (i), concerning the Land Charges Act. The effect of para. (ii) is that a purchaser is only fixed with actual notice of a matter if it is within his personal knowledge (i.e., that of the lay client himself) or is a matter learned by his counsel, solicitor or agent "as such" and in the same transaction. The rules for constructive notice are parallel to those for actual notice. It follows that notice to the purchaser through his solicitor must be notice acquired by the solicitor in the pursuance of his duties as the purchaser's solicitor. It is no more a part of those duties for the solicitor to gratify his "idle curiosity" by turning beyond the probate to the will than it would be part of his duty to look through the papers on the desk of the vendor's solicitor at whose office he is inspecting the deeds. It appears to me that if he advised his client to rescind on the basis of information derived in either way, his client would be likely to lose the ensuing proceedings, and the officious practitioner would be fortunate to escape an order to pay the costs personally, quite apart from any subsequent proceedings for negligence brought by his own client.

My correspondent also mentions that it would be easier to get the correct modern practice adopted if (i) the Court of Appeal were to overrule *Re Duce and Boots' Contract* [1937] Ch. 642, or (ii) s. 36 (7) of the Administration of Estates Act, 1925, were amended so as to make an assent "conclusive" evidence, instead of merely "sufficient" evidence, that it is made in favour of the person entitled to have it. I entirely agree that it would have been much more convenient if such a provision had been made in the first instance, and equally if

"sufficient" were held to mean "conclusive." But I do not think that there is much prospect of the reversal by the Court of Appeal of a decision, on a conveyancing matter, which has stood for over eight years. Parliament might, however, very well be invited to alter the subsection, not necessarily by substituting the word "conclusive" for "sufficient," but by a form of words bringing the assumptions which follow from an ordinary assent into line with those which follow from a vesting assent (or any other vesting instrument) under S.L.A., s. 110 (2). Such an amendment would make for consistency and could be strongly urged on that ground. But, in the meantime, it seems very illogical to argue that one should put more into the abstract rather than less. Section 36 (7) establishes that a reticent abstract consisting only of the probate and the assent is sufficient. All that *Re Duce and Boots' Contract* did was to lay down that a purchaser must inquire into the correctness of the assent if the purchaser gives him an opening to do so by abstracting too much. The case is, in fact, a very strong argument for abstracting as little as possible. The suggestion that such an abstract invites a "wrangle" surprises me. The reply to a requisition calling for more is "The abstract is sufficient: see A.E.A., s. 36 (7), and *Re Duce and Boots' Contract* [1937] Ch. 642." It is difficult to see what legitimate further observation the purchaser could then make. If he makes an unjustified one, the vendor should curtly repeat his reply and remind the purchaser that he has his remedy.

I understand very well how difficult it is to change the habits of one's early years, but I should like to stress, once again, how desirable it is to make full use of the facilities for brevity and simplicity which the Property Acts of 1925 afford, quite apart from the technical correctness of doing so. Nothing annoys the layman more than to be reminded of his inborn suspicion that we are spinning words. He thinks that it ought to be as easy to convey land as to convey stock, a feeling expressed more crudely by saying that "one should be able to convey one's house on half a sheet of notepaper." This idea is foolish, as we well know, but we do not strengthen our case by going in for avoidable verbosity. We must remember that private conveyancing was put on its trial in 1926; most of us think registration unsatisfactory and view it with the justifiable reserve that any professional person has for facile solutions. But we must not forget that it is the laity that make the laws, and it is for us to convince them that our way is the best way. In their Preface to the twelfth edition of "Wolstenholme" the late Sir Benjamin Cherry and his colleagues wrote thus in 1932: "Among older practitioners there appears to be still a tendency to make inquiries respecting equities which are intended to be placed behind the curtain, thus playing into the hands of the advocates of registration of title. This tendency is, however, likely to disappear when the younger generation assume control." My correspondent and others of his generation are about to take the places which the war has delayed them assuming. There is no time like the present for modernising our practice, especially as the correct practice means less volume of work on each case, a material consideration in these days of short staffs. It is the returning generation's duty to insist; it is for those seniors who have not moved with the times to give way gracefully.

One word in conclusion. My correspondent says he is suffering from having too little to do in the Army. If he and others in his predicament will take this opportunity really to master the five important Acts of 1925, learning what each provision says and how the sections are arranged, they will be doing a real public service, as well as improving their own efficiency. Much of the strength of the resistance has lain in the fact that the older generation can point to long-established usage, and can challenge the critic to point to the section which makes that usage wrong. The Property Acts, for all their faults, are logical and coherent and the answers are usually there. The conveyancing practitioner who has all those answers ready is at an immense advantage.

LANDLORD AND TENANT NOTEBOOK

SURRENDER OF CONTROLLED TENANCY

MANY a landlord of controlled premises is willing to "buy the tenant out," and the question whether such a transaction is against law may cause him some concern. In this article I will assume that, if an agreement to surrender a statutory tenancy is legal, an agreement to surrender a contractual but controlled tenancy is likewise lawful; and I hope to show that while there can be no question about such legality, the carrying into effect of the agreement may indeed present the landlord with some difficulties.

It may be useful to bear in mind that the object of the Increase of Rent, etc., Acts is, as their names suggest, the control of rents, and that the conferment of security of tenure is merely ancillary to that object. This may explain, though I will not say that it excuses the difficulties experienced in the past in arriving at the nature and extent of what is called a "statutory tenancy." The so-called statutory tenant's position rests upon two provisions, one negative and one positive. The former is now in s. 3 (1) of the Rent, etc., Restrictions (Amendment) Act, 1933, the important words being: "No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment of a tenant therefrom shall be made or given unless the court . . ." The latter is in s. 15 (1) of the Increase of Rent, etc., Act, 1920: "A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy or, if no notice would have been required, on giving not less than three months' notice . . ."

It was at first thought that the tenant so retaining possession could assign his interest and perhaps dispose of it by will, and that it would pass to his trustee in bankruptcy, and it was not until *Keeves v. Dean* [1924] 1 K.B. 685 (C.A.) (in which Scrutton, L.J., observed that Parliament did not seem to have contemplated what was to happen on the occurrence of these most ordinary incidents of life) had been decided that we really began to have a clear idea of what that interest was: *Roe v. Russell* [1928] 2 K.B. 117 (C.A.) may be said to have completed this process of clarification. In the former, *Bankes, L.J.*, said that the statutory tenant had in a sense no such state or interest such as a tenant has; his right was a purely personal right; but *Scrutton, L.J.*, added that his rights were not limited to rights against the landlord, and he could bring proceedings for trespass against a stranger. However, the "status of irremovability" was the essential characteristic.

But personal rights may have a cash value, and before then, the question of surrender had been touched upon in *Barton v. Fincham* [1921] 2 K.B. 291 (C.A.), an authority which, it will be seen, draws attention to the negative enactment mentioned in my second paragraph, incidentally the only one referred to in the headnote to the report. The plaintiff had bought a controlled house, subject to the defendant's monthly tenancy, with the object of selling it with vacant possession. In July, 1920, the two came to an agreement, reduced to writing, by which the defendant

gave "notice to quit," and promised to yield up possession at Michaelmas in consideration of an immediate payment of £20, which was made. When Michaelmas came the defendant retained possession of both house and £20. The plaintiff limited his claim to possession of the house and mesne profits. The county court decided in his favour. In the Divisional Court one judge held that the agreement was void as being against public policy, but both that he had not proved any of the grounds for possession following the "unless the court" in what is now s. 3 (1) of the 1933 Act. Accordingly, the Court of Appeal gave us authority on both points.

Holding that the agreement was valid, *Bankes, L.J.*, referred to s. 15 (2): "Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord," consequences being penal. "It seems obviously necessary," said the learned lord, justice, "to exclude a landlord who may be willing to pay something to a tenant for vacant possession from this penalty." And *Scrutton, L.J.*, after describing the position of a statutory tenant in general said: "He can leave of his own free will, *surrendering his tenancy.*"

So much for legality, and it can be said that the passages cited dispose of any suggestion that the statutory tenant being "entitled to give up possession . . . only on giving such notice as, etc." must, as it were, work out his time; the "only" qualifies "entitled" and not "give up possession." But when it comes to the matter of enforcement of the agreement, both lords justices demonstrate that there can be no contracting out of the provisions designed to confer security of tenure. "The Legislature has definitely declared that the court shall exercise its jurisdiction only in the instances specified" said *Bankes, L.J.*; and *Scrutton, L.J.*, "But if he [the tenant] is in possession and unwilling to give t up, possession can only be obtained by order of court, which order can only be made if certain specified facts are proved."

The specified facts include (Sched. I (c)): "The tenant has given notice to quit, and, in consequence of that notice, the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession," and this suggests the most hopeful course for a landlord to choose, unless he can negotiate a surrender on C.O.D. terms or better. The plaintiff in *Barton v. Fincham* did not give evidence of any prejudice; incidentally the question whether the defendant's notice was a "notice to quit" as contemplated by the paragraph was not gone into; unless her tenancy ran from the 29th of the month it was not.

It may be added that what is not too clear is whether a controlled or statutory tenant who retained possession after expiry of a notice to quit given by himself can be made liable for double rent by virtue of the Distress for Rent Act, 1937, s. 18. In *Flannagan v. Shaw* [1920] 3 K.B. 96 (C.A.), it was held that he could, and the validity of this was assumed by *Scrutton, L.J.*, in *Barton v. Fincham, supra*; but, as has been pointed out, the older decision was decided under the Act of 1915, and before we had the "statutory tenant's charter," s. 15 of the Act of 1920.

PRACTICE NOTES

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division
(Divorce).

(1) *Custody of Legitimated Children.*

Either party to a marriage may claim custody of a child which has been legitimated by virtue of Section 1 of the Legitimacy Act, 1926.

In a Petition the legitimated child should not be described as issue of the marriage but there should be a separate paragraph setting out the name and date of birth of the child and the fact that such child

has been legitimated by the operation of Section 1 of the Legitimacy Act, 1926.

The Directions of 19th May, 1927, 21st January, 1929, and 7th June, 1929, are cancelled.

(2) *Answer of Co-Respondent who wishes to be heard as to Damages only.*

Where a Co-Respondent wishes to be heard as to damages only, his Answer should not be a denial of the adultery alleged but a statement that he does not admit that the Petitioner has suffered damage to the extent claimed (or at all).

H. F. O. NORBURY,
Senior Registrar.

20th November, 1945.

TO-DAY AND YESTERDAY

November 26.—On the 26th November, 1577, the Gray's Inn benchers ordered that £8 be allowed to the gentlemen of the Society for the maintenance of their commons between the end of that term and the beginning of the next, besides 26s. 8d. to the musicians at Christmas time "yf yt be not thought perrillous for the sycknes."

November 27.—On the 27th November, 1609, the Gray's Inn benchers ordered "that all the gentlemen of this Society (except the Master of Requests and the King's Solicitor) shall henceforth wear caps in the hall both in the term time and in the vacation (except it be in the twelve days at Christmas) under pain of 12d. for every default." Francis Bacon was then Solicitor-General.

November 28.—On the 28th November, 1876, at the Manchester Assizes, a lad named William Hebron was convicted of murdering a policeman, though the death sentence was afterwards respited on account of his youth. The remarkable thing about the case is that the notorious Charles Peace was the murderer and was in court for the trial. He afterwards wrote: "Some people will say that I was a hardened wretch for allowing an innocent man to suffer for my crime: But what man would have done otherwise in my position? Could I have done otherwise knowing that I should certainly be hanged for the crime?" When the facts were known Hebron was released from prison and solaced with £800.

November 29.—Morrison Remick Waite was born at Lyme in Connecticut on the 29th November, 1816. He adopted the law as his profession, and in 1874 was appointed Chief Justice of the United States Supreme Court, holding that position until his death at Washington in 1888.

November 30.—John Rann worked creditably for some years as a servant to several persons of distinction and while he was coachman to a gentleman of fortune living near Portman Square he earned the appellation of "Sixteen-String Jack," from wearing breeches with eight strings at each knee. Eventually, however, he took to a criminal life first as a pickpocket, then as a receiver of stolen goods and finally as a highwayman in his own right. This career lasted for about four years during which time he affected the utmost elegance and display in the finery of his dress. In 1774 he was tried at the Old Bailey for a robbery on the Uxbridge Road. In court he wore a new pea-green suit and a ruffled shirt, and carried a hat bound round with silver. He confidently expected an acquittal and even ordered a celebration supper for his friends, but he was convicted and on the 30th November he was executed at Tyburn.

December 1.—"Whereas the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies as they are thereby tempted to spend their small substance in riotous pleasures and in consequence are put on unlawful methods of supplying their wants and renewing their pleasures. In order therefore to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness which is become too general over the whole kingdom . . . Be it enacted . . . that from and after the 1st December, 1752, an house, room, garden or other place kept for public dancing, music or other public entertainment of the like kind in the cities of London and Westminster, or within twenty miles thereof, without a licence . . . shall be deemed a disorderly house or place." (Disorderly Houses Act, 1751.)

December 2.—In 1823 Captain George Harris of the *Hussar* frigate was tried by court martial at Portsmouth on charges accusing him of neglect of duty in delaying the sailing of his vessel which was to take out Sir Edward Thornton as envoy extraordinary and minister plenipotentiary to Lisbon. On the 2nd December he was honourably acquitted, the court holding that the sailing was delayed solely by the non-embarkation of Sir Edward.

APSLEY HOUSE

It is a comfort to hear that in the coming riot of demolition, which, it seems, must clear the site for the new, planned, atomic age London, Apsley House is to be spared, albeit, by the grace and wisdom of town planning, reduced to the status of a piece of scene painting or a picturesque traffic island "not easily accessible to pedestrians." They can pull down the iron blinds for good, and in the darkness of its vast deserted halls, the shade of the great Duke of Wellington will be as much forgotten as that of its founder, Lord Chancellor Bathurst. He became Baron Apsley of Apsley in the County of Sussex after he received the Great Seal in 1771, for he did not succeed to the earldom of his father, Lord Bathurst, till 1775. He remained on the Woolsack for seven years, upright, virtuous, highly esteemed, but undeniably a mediocrity. Indeed, the building of Apsley House was the most memorable thing about him, though it gave occasion for an unkind joke. Some years before, George II, recognising an old soldier named Allen, who had served under him at Dettingen, and was then selling apples at Hyde Park Corner, asked him what he would like and received a request for permission to have a permanent stall there. His wish was granted, and he built a small tenement on a spot which afterwards became part of the site of Apsley House. (The stall can be seen in a print dated 1766.) The erection of the mansion raised a controversy with the widow of the old soldier, who is said to have filed a bill in Chancery. She relinquished her claim on payment of adequate consideration, and a barrister summed up the matter thus: "Here is a suit by one old woman against another, and the Chancellor has been beaten in his own court."

GYPSIES

In recalling the supposed gypsy descent of Lord Chancellor Birkenhead, I omitted to mention how hard Tudor legislation tried to abolish the race. An Act of 1530, which gave them sixteen days to quit the realm, recited how "divers and many outlandish people calling themselves Egyptians . . . have come into this realm and gone from shire to shire and place to place in great company and used subtle and crafty means to deceive the people." They told fortunes by palmistry, taking people's money by craft and subtlety, and they "also committed many and heinous felonies and robberies to the great hurt and decay of the people they have come among." Sixteen days did not see their departure nor sixteen years, and an Act of Philip and Mary, reproaching their devilish and naughty practices and their abominable living, not to be permitted in any Christian realm, made it a capital offence for them to tarry in the country more than a month. Elizabeth succeeded Mary and they were still there, even recruiting their numbers among the adventurous who adopted their tongue, their customs and their dress. In 1562 these also were made felons by statute. When Sir Mathew Hale was Chief Justice he could recall having seen thirteen men hanged as gypsies.

OBITUARY

MR. F. A. BAINBRIDGE

Mr. Florance Anthony Bainbridge, solicitor, of Messrs. Mills and Reeve, solicitors, of Norwich, died on Sunday, 11th November, aged seventy-four. He was admitted in 1896.

MR. V. S. GOSLING

Mr. Vincent Samuel Gosling, solicitor, of Messrs. Underhill, Willcock & Taylor, solicitors, of Wolverhampton, died recently, aged sixty-four. He was admitted in 1909 and was a past President of the Wolverhampton Law Society.

MR. H. M. WALKER

Mr. Henry Milnes Walker, solicitor, of Messrs. Bury and Walkers, solicitors, of Barnsley, Yorks, died on Saturday, 10th November, aged seventy-seven. He was admitted in 1889.

HONOURS AND APPOINTMENTS

Mr. J. F. SPRY, Chief Inspector, Land Registration Department, Palestine, has been appointed Assistant Director of Land Registration, Palestine.

The Honourable Mr. Justice WALLINGTON has been elected Treasurer of the Honourable Society of Gray's Inn for the year 1946, in succession to Mr. R. Warden Lee, who has been elected Vice-Treasurer for the same period.

LORD WRIGHT has been elected Treasurer of the Inner Temple for 1946. LORD SCHUSTER, K.C., has been elected leader for the Lent Vacation, 1946. Mr. Justice AUSTIN JONES, Sir FRANK SOSKICE, K.C., Mr. M. P. FITZGERALD, K.C., Mr. G. H. B. STREATFIELD, M.C., K.C., and Mr. HUBERT HULL have been elected Masters of the Bench.

NOTES OF CASES

KING'S BENCH DIVISION AND COURT OF APPEAL

National Union of General and Municipal Workers
v. Gillian and OthersBirkett, J. 31st July, 1945
Scott and MacKinnon, L.J.J., and Uthwatt, J.
Trade union—Right to sue in tort.

Appeal from a decision of Birkett, J.

The plaintiffs, a trade union, brought this action in their registered name, claiming damages for libel against the defendants, who pleaded in their defence that the action was not maintainable at the suit of the plaintiffs. An order was accordingly made under R.S.C., Ord. XXV, r. 2, for trial of the issue so raised as a preliminary point of law. (*Cur. adv. vult.*)

BIRKETT, J., was of opinion that the rules of the plaintiffs would have constituted them an unlawful association but for the Trade Union Act, 1871; that the libels complained of would have an adverse effect on the plaintiffs' property by lessening its subscriptions and membership; that, while in *Taff Vale Railway Co. v. Amalgamated Society of Railway Workers* [1901] A.C. 426; 50 W.R. 44, the actual point for decision was whether a trade union could be sued, the power of such a union to sue was also under consideration in the House of Lords, so that that case was decisive of the present case; that the Act of 1871 created, in the form of a trade union, a new legal entity, which could sue in its registered name and was not confined to suing for the purposes set out in that Act; that the plaintiffs, as a trade union, had a character which could be defamed; and that the alleged libels constituted imputations on the plaintiff union in its collective name as distinct from the individuals who composed it. He accordingly held that the action was maintainable. The defendants appealed. (*Cur. adv. vult.*)

SCOTT, L.J., in a written judgment, said that the far-reaching legal questions at issue were as follows: (1) Could any trade union sue in respect of a tort? (2) If generally it could, could it sue for a libel? (3) If in some cases some trade union might be at liberty to sue, could the plaintiff union sue for the libels alleged? All the Trade Union Acts, from 1871 to 1927, were to be read as one, but the only two directly relevant were those of 1871 and 1876. Because a registered trade union, as defined by s. 16 of the Act of 1876, was neither a natural person nor a corporation, it was contended for the defendants that it could have no powers except those conferred in express terms by Parliament. That argument was, however, fallacious. A trade union had many activities; it had some existence; and it was something. Parliament by the Act of 1871 had clothed an existing association of natural persons with what might be called co-operative personality so as to give to it the status of a *persona juridica*. The primary object of the legislation was to validate and encourage the exercise by trade unions of a whole group of industrial functions falling under the general heading "collective bargaining." The legislation in question contained many specific examples of attributes of legal personality expressly attributed to trade unions, for example, the right to own property, nominally vested in trustees; the right to register, and change, an identifying name; and the right to bring or defend actions in the name of the trustees. The quality of legal personality thus clearly attributed to trade unions necessarily connoted the general power to do at any rate many of the things inherent in the legal concept of personality. There was no *prima facie* ground for limiting by any implication the list of powers normally attendant on legal personality. The true interpretation of the Acts was that a trade union was given all the powers of a *persona juridica* except those solely characteristic of a natural person and those expressly excepted by the creating statute. The policy of the Act was to encourage collective bargaining. Disintegration of a union was the supreme danger. The union must be able to protect itself against any form of attack calculated to arouse doubts and suspicions in the minds of members and so to destroy its cohesion and will to act; and the most effective power of defence was the right of action in the King's courts, which Parliament could not possibly have intended not to confer. It being assumed that a trade union could, generally speaking, sue in tort, he (his lordship) could see no ground for excluding an action for defamation. The merits of the present case were, of course, not before the court, but, for the trial of a preliminary issue under Ord. 25, r. 2, the allegations in the statement of claim must be assumed to be true; and if the answers given to the first two questions were correct, the answer to the third obviously was that the present case was typically one to which those answers applied. The appeal would be dismissed, but there would be leave to appeal to the House of Lords.

MACKINNON, L.J., and UTHWATT, J., agreed.

COUNSEL: Paull, K.C., and Ryder Richardson, for the first two defendants; Travers, for the third defendants; Slade, K.C., and Valentine Holmes, K.C., for the plaintiffs.

SOLICITORS: A. L. Philips & Co.; Robert Clayton & Co.; Syrett & Sons.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

Practice Note

Vaisey, J. 22nd October, 1945

Practice—Family provision—Evidence as to unsoundness of mind of testator inadmissible—Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45).

In the course of hearing an application under the Inheritance (Family Provision) Act, 1938, VAISEY, J., said that he had consulted his brother judges and that he could say that all were agreed that, on applications under the Inheritance (Family Provision) Act, 1938, the question of the testator's unsoundness of mind, or even want of lucidity of mind, could not possibly be in issue and ought not to be raised. It might be the reason why the will was in a peculiar form, and it might be the reason why it was unintelligible, but it could not be one of the testator's reasons for making the bequest. It was a lack of reason, and the suggestion of weakness of mind ought to be excluded.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

CIVIL DEFENCE (SUSPENSION OF POWERS) BILL [H.C.].

INDIA (PROCLAMATION OF EMERGENCY) BILL [H.L.].

To amend the Government of India Act, 1935, as respects the effect of the Proclamations of Emergency under s. 102 of that Act.

INSHORE FISHING INDUSTRY BILL [H.C.].

POLICE (OVERSEAS SERVICE) BILL [H.C.]. [20th November.

Read Second Time:—

STATUTORY ORDERS (SPECIAL PROCEDURE) BILL [H.C.].

[22nd November.

Read Third Time:—

BRITISH SETTLEMENTS BILL [H.C.].

EXPIRING LAWS CONTINUANCE BILL [H.C.].

[20th November.

SUPPLIES AND SERVICES (TRANSITIONAL POWERS) BILL [H.C.].

[22nd November.

HOUSE OF COMMONS

Read First Time:—

METROPOLITAN WATER BOARD BILL [H.L.].

[20th November.

Read Second Time:—

ELECTIONS AND JURORS BILL [H.C.]. [21st November.

EMERGENCY LAWS (TRANSITIONAL PROVISIONS) BILL [H.C.].

[20th November.

FINANCE BILL [H.C.].

[19th November.

ISLE OF MAN CUSTOMS BILL [H.C.].

[21st November.

Read Third Time:—

GLOUCESTER CORPORATION BILL [H.L.].

REIGATE CORPORATION BILL [H.L.]. [22nd November.

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—
CHANCERY DIVISION

MICHAELMAS SITTINGS, 1945

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.		EMERGENCY ROTA.		APPEAL COURT I.		Mr. Justice UTHWATT.	
		Mr. Farr	Blaker	Mr. Reader	Hay	Mr. Hay	Farr
Mon., Dec.	3	Mr. Farr	Blaker	Mr. Reader	Hay	Mr. Hay	Farr
Tues., "	4	Blaker	Andrews	Hay	Farr	Farr	Blaker
Wed., "	5	Andrews	Jones	Farr	Blaker	Blaker	Andrews
Thurs., "	6	Jones	Reader	Blaker	Andrews	Andrews	Jones
Fri., "	7	Reader	Hay	Andrews	Jones	Jones	Reader
Sat., "	8	Hay		Jones		Reader	
		GROUP A.		GROUP B.			
Date.		Mr. Justice COHEN.	Mr. Justice VAISEY.	Mr. Justice EVERSHED.	Mr. Justice ROMER.		
		Non-Witness.	Witness.	Witness.	Non-Witness.		
Mon., Dec.	3	Mr. Jones	Mr. Andrews	Mr. Farr	Mr. Blaker		
Tues., "	4	Reader	Jones	Blaker	Andrews		
Wed., "	5	Hay	Reader	Andrews	Jones		
Thurs., "	6	Farr	Hay	Jones	Reader		
Fri., "	7	Blaker	Farr	Reader	Hay		
Sat., "	8	Andrews	Blaker	Hay	Farr		

RULES AND ORDERS

S.R. & O., 1945, No. 1450/L.21
SUPREME COURT, ENGLAND
PROCEDURE

THE RULES OF THE SUPREME COURT (PATENTS), 1945
DATED NOVEMBER 16, 1945

I, William Allen Baron Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. In Order LIIIA, Rule 4, Paragraphs (b), (c), (d) and (e) shall be deleted and the following shall be substituted therefor:—

(b) At least 7 days before the day on which the originating summons is returnable the applicant shall file and serve on the Solicitor to the Board of Trade an affidavit stating all material facts on which the applicant relies.

(c) On the return of the summons, or on any adjournment thereof caused by the insufficiency of the applicant's evidence or otherwise, directions shall be given for advertisement of the application which shall, unless the Judge in Chambers shall otherwise specially direct, be at least two advertisements in the Official Journal (Patents). And thereupon the summons shall be adjourned to a day (hereinafter called the appointed day) not being less than 4 weeks from the estimated date of the first of the forthcoming appearances of the advertisement in the Official Journal (Patents).

(d) The form of the advertisement shall be approved by the Judge in Chambers and shall state the object of the application and name the day fixed as the appointed day. The advertisement shall also state an address for service on the applicant of any document requiring service under this Rule, and shall also give notice that notices of objection must be lodged as hereinafter provided at least 7 days before the appointed day. Within 3 days from the day on which the form of the advertisement shall have been approved as aforesaid, a copy thereof shall be served by the applicant on the Solicitor to the Board of Trade who shall thereupon cause such advertisement to be inserted in the two following issues of the Official Journal (Patents).

(e) Except with the leave of the Judge in Chambers, no affidavit shall be filed by the applicant between the appearance of the first advertisement in the Official Journal (Patents) as aforesaid and the appointed day.

2. These Rules may be cited as the Rules of the Supreme Court (Patents), 1945.

Dated the 16th day of November, 1945.

Jowitt, C.
We concur, Caldecote, C.J.
Greene, M.R.

* 2 & 3 Geo. 6, c. 78.

† 15 & 16 Geo. 5, c. 49.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1945

- No. 1441. **Customs.** Import Duties (Exemptions) (No. 4) Order. Nov. 19.
- E.P. 1451 and 1452. **Defence General Regulations, 1939.** Orders in Council, Nov. 16, amending the Regulations; 1451, amending Reg. 42ca; 1452, adding Reg. 68cb.
- E.P. 1453. **Evacuated Areas.** Order in Council, Nov. 16, amending Reg. 4 of, and adding Reg. 4A to, the Defence (Evacuated Areas) Regulations, 1940.
- No. 1372. **Record Office, England.** Disposal of Valueless Documents. Order in Council, Oct. 30, approving additional rule amending the Rules of 28th May, 1936, for the disposal of valueless documents.
- No. 1450/L.21. **Supreme Court.** Rules of the Supreme Court (Patents). Nov. 16, *supra*.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

H.M. LAND REGISTRY

On and after the 6th of December, 1945, the office in Brooke Street will be closed to the public, and the facilities for personal attendance at the Registry will accordingly be suspended until the Land Registry is re-opened at its former address in Lincoln's Inn Fields (London, W.C.2) on the 31st of December, 1945.

During the interval all business can be conducted by post. All communications should be addressed to—

"The Chief Land Registrar, Land Registration Branch"; to
"The Superintendent, Land Charges Department"; or to
"The Superintendent, Agricultural Credits Department"

as the case may be at

"H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2."

BY ORDER OF THE CHIEF LAND REGISTRAR.

H.M. Land Registry,
November, 1945.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Nov. 26 1945	Flat Interest Yield	† Approximate Yield with redemption
British Government Securities				
Consols 4% 1957 or after ..	FA	110	3 12 9	2 18 6
Consols 2½%	JAJO	90½	2 15 3	—
War Loan 3% 1955-59 ..	AO	102	2 18 10	2 15 2
War Loan 3½% 1952 or after ..	JD	102½	3 8 3	3 1 7
Funding 4% Loan 1960-90 ..	MN	112½	3 11 1	2 18 0
Funding 3% Loan 1959-69 ..	AO	101	2 19 5	2 18 2
Funding 2½% Loan 1952-57 ..	JD	100½	2 14 9	2 13 3
Funding 2½% Loan 1956-61 ..	AO	98	2 11 0	2 13 3
Victory 4% Loan Av. life 18 years ..	MS	113½	3 10 6	3 0 4
Conversion 3½% Loan 1961 or after ..	AO	105½	3 6 2	3 0 5
National Defence Loan 3% 1954-58 ..	JJ	102½	2 18 6	2 12 11
National War Bonds 2½% 1952-54 ..	MS	99½	2 10 1	2 10 4
Savings Bonds 3% 1955-65 ..	FA	101½	2 19 3	2 17 1
Savings Bonds 3% 1960-70 ..	MS	100½	2 19 6	2 18 9
Local Loans 3% Stock ..	JAJO	96½	3 2 2	—
Bank Stock	AO	395	3 0 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after ..	JJ	99	3 0 7	—
Guaranteed 2½% Stock (Irish Land Act 1903)	JJ	96	2 17 4	—
Redemption 3% 1986-96 ..	AO	102	2 18 10	2 18 4
Sudan 4½% 1939-73 Av. life 16 years ..	FA	117	3 16 11	3 2 8
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	1 17 0
Tanganyika 4% Guaranteed 1951-71 ..	FA	106	3 15 6	2 13 11
Lon. Elec. T.F. Corp. 2½% 1950-55 ..	FA	98	2 11 0	2 14 1
Colonial Securities				
*Australia (Commonw'h) 4% 1955-70 ..	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3½% 1964-74 ..	JJ	101	3 4 4	3 3 8
Australia (Commonw'h) 3% 1955-58 ..	AO	99	3 0 7	3 1 11
†Nigeria 4% 1963	AO	114	3 10 2	2 19 8
*Queensland 3½% 1950-70	JJ	102	3 8 8	2 19 4
Southern Rhodesia 3½% 1961-66 ..	JJ	107	3 5 5	2 18 9
Trinidad 3% 1965-70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3% 1947 or after ..	JJ	97	3 1 10	—
*Croydon 3% 1940-60	AO	100½	2 19 8	—
*Leeds 3½% 1958-62	JJ	103	3 3 1	2 19 0
*Liverpool 3% 1954-64	MN	101	2 19 5	2 17 4
Liverpool 3½% Red'mable by agreement with holders or by purchase ..	JAJO	106	3 6 0	—
London County 3% Con. Stock after 1920 at option of Corporation ..	MSJD	97	3 1 10	—
*London County 3½% 1954-59 ..	FA	106	3 6 0	2 14 0
Manchester 3% 1941 or after ..	FA	98	3 1 3	—
*Manchester 3% 1958-63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963-2003	AO	98½	3 0 11	3 1 2
*Do do. 3% "B" 1934-2003 ..	MS	99½	3 0 4	3 0 9
*Do do. 3% "E" 1953-73 ..	JJ	101	2 19 5	2 17 0
Middlesex C.C. 3% 1961-66 ..	MS	100½	2 19 8	2 19 2
*Newcastle 3% Consolidated 1957 ..	MS	100½	2 19 8	2 19 0
Nottingham 3% Irredeemable ..	MN	97	3 1 10	—
Sheffield Corporation 3½% 1968 ..	JJ	107	3 5 5	3 1 2
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture ..	JJ	108	3 14 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	117	3 16 11	—
Gt. Western Rly. 5% Debenture ..	JJ	126	3 19 4	—
Gt. Western Rly. 5% Rent Charge ..	FA	122½	4 1 8	—
Gt. Western Rly. 5% Cons. G'teed. ..	MA	118½	4 4 5	—
Gt. Western Rly. 5% Preference ..	MA	106	4 14 4	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date: in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

5

ki-
eld
tion

d.
6

2

7

0

2

3

3

4

5

11

4

1

9

4

8

0

19

1

5

8

11

8

4

9

0

0

4

0

2

2

9

0

2

0

2

ed at

cery

arly,

1 by

a).